1. INTRODUCTION

In his Editor’s Preface to Elagab’s book, in 1986 Ian Brownlie argued that countermeasure ‘has been generally neglected by the literature, in spite of its evident significance in international relations’. Almost thirty years later, a spate of studies has rendered this statement no longer topical on countermeasures in inter-state relations. Yet, Brownlie’s assessment remains cogent regarding countermeasures against international organizations—in particular countermeasures by member States—a subject which, until recently, has fairly been neglected. This is not surprising. The literature tends to stress international organizations’ sanctions as a centralized response to internationally wrongful acts, contrasting them with the unilateral resort by States to private justice. Against this background, recourse to countermeasures by member States against international organizations represents to a certain degree a source of embarrassment for the international lawyer: in addition to raising very complex questions, it evidences the persistent clash between the phenomenon of institutionalization at the foundation of international organizations and the still rudimentary logic of self-help prevailing in international society.


2 The possibility that international organizations may be the target of countermeasures under international law has often been cast into doubt. See, for instance, the conclusions of Advocate General Tesauro relating to the case C-327/91 before the European Court of Justice, [1994] ECR I-3641, point 21.

In its efforts to codify the rules on countermeasures against international organizations, the International Law Commission has faced with great difficulties, due to scarcity of practice and the delicate legal issues involved, as well as the fact that some States, in their comments to the Commission, argued against the inclusion of a chapter on countermeasures in the articles on the responsibility of international organizations.\(^4\) In the end, the Commission decided to preserve, as much as possible, the autonomy and correct functioning of international organizations, also by restricting the possibility that member States may escape their obligations with the pretext of adopting a countermeasure. However, this approach risks rendering almost theoretical the adoption of countermeasures by member States, leaving them without any effective means of pressure to induce compliance by international organizations with the international obligations they have breached. Moreover, the position adopted by the Commission in the articles on the responsibility of international organizations seems to deviate from the perspective that prevailed in the codification of State responsibility, by embracing an idea of self-contained regimes completely decoupled from general international law.

2. The Requirement of Consistency with the ‘Rules of the Organization’

The articles on the responsibility of international organizations, which the Commission finally adopted in 2011, distinguish between countermeasures against international organizations by member States from those adopted by non-members. While articles 51 and 53–57 contain rules applicable to both cases,\(^5\) article 52 provides additional rules specifically applicable to countermeasures by the member States.\(^6\) Article 52 reads as follows:

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:


\(^5\) These articles list conditions for the adoption of countermeasures (prior breach, proportionality, etc.) which are patterned after the articles on State responsibility.

\(^6\) The content of this article is similar to that of article 22(2) on State responsibility, dealing with the reverse case of countermeasures taken by an organization against a member State. (On this point, see F. Dopagne, ‘Sanctions and Countermeasures by International Organizations. Diverging Lessons for the Idea of Autonomy’, R. Collins and N.D. White (eds.), *International Organizations and the Idea of Autonomy. Institutional Independence in the International Legal Order* (London and New York, 2011), 178–95.)